

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

File No. RH01013503
Date: March 29, 2002

INITIAL STATEMENT OF REASONS

INTRODUCTION:

California Insurance Commissioner Harry W. Low ("Commissioner") will consider the adoption of Title 10, California Code of Regulations, Chapter 5, Subchapter 9, Article 7, Sections 2698.90 to 2698.91.

The purpose of the proposed regulations is to implement, interpret, and make specific the provisions of California Insurance Code ("Ins. Code") section 758.

**DESCRIPTION OF THE PUBLIC PROBLEM ADDRESSED BY EACH SUBDIVISION /
THE SPECIFIC PURPOSE AND NECESSITY OF EACH SUBDIVISION**

Auto insurance fraud and theft in California costs upwards of \$9 billion annually. The Legislative Branch determined that more needed to be done to curtail these fraudulent activities.

Ins. Code section 758 makes it unlawful for an insurer to require an auto body shop to pay for the cost of an insured's rental vehicle charges or towing charges as a condition of participation in the insurer's direct repair program. However, the statute allows such charges if the insurer and the auto body shop agree in writing to terms that cover the charges when the auto body shop fails to complete the repairs within the agreed upon time. Ins. Code section 758 further provides that an auto body repair shop that is denied participation in an insurer's direct repair program may report that denial to the Department of Insurance, who shall maintain a record of the denials for the purpose of gathering market conduct information. Additionally, if asked by the Department of Insurance, an insurer must disclose that a denial was made.

The same statute requires any insurer that conducts an auto body repair labor rate survey to determine and set a specified prevailing rate in a specific geographic area to report the results of the survey to the Department of Insurance. The Department of Insurance is required to make the information available upon request.

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is set forth below.

Proposed section 2698.90 (a)

The term “Direct Repair Program” as used in Ins. Code section 758 is unclear. Insurers use several names to identify their specific programs. The statute refers to a general category of programs, rather than the name of a specific program. This is the rationale for the determination that this regulation is reasonably necessary to carry out the following specific purpose: to define this term in order to assist the reader in understanding the statute and regulations.

Proposed section 2698.90(b)

Ins. Code section 758(b) is unclear as to where an auto body repair facility reporting a denial to participate in an insurer’s direct repair program should report that denial. This is the rationale for the determination that this section is reasonably necessary to carry out the following specific purpose: to clarify the statutory provisions.

Proposed section 2698.91(a)

The term “labor rate survey” as used in Ins. Code section 758(c) is unclear. This is the rationale for the determination that this section is reasonably necessary to carry out the following specific purpose: to define these terms in order to assist the reader in understanding the statute and regulations.

Proposed section 2698.91(b)

The term “prevailing auto body rate” as employed in Ins. Code section 758(c) is unclear. This is the rationale for the determination that this section is reasonably necessary to carry out the following specific purpose: to define these terms in order to assist the reader in understanding the statute and regulations.

Proposed section 2698.91(c)

Ins. Code section 758(c) requires an insurer to report the results of any labor rate survey it conducts to the department and provides that the name and address of the shops surveyed and the total number of shops surveyed must be listed. However, the language of the statute implies that additional information may be reported. This section requires the insurer to also provide a description of what geographic areas were surveyed, a description of the methodology used by the insurer to reach the prevailing rate, and the prevailing rate established for each geographic area surveyed. This information provides a context for the information specifically outlined in the statute. This is the rationale for the determination that this section is reasonably necessary to carry out the following specific purpose: to clarify the statutory provisions.

This section also requires that any confidential information not required by the statute or regulations be removed from the survey before it is submitted to Department of Insurance.

Proposed section 2698.91(d)

It is unclear from § 758(c) specifically where insurers should submit the results of a labor rate survey. This is the rationale for the determination that this section is reasonably necessary to carry out the following specific purpose: to clarify the statutory provisions.

Proposed section 2698.91(e)

The statute does not state where requests for the labor rate survey results should be directed. This is the rationale for the determination that this section is reasonably necessary to carry out the following specific purpose: to clarify the statutory provisions.

IDENTIFICATION OF STUDIES AND REPORTS

The Department of Insurance did not rely upon any technical, theoretical and/or empirical study, report or similar document in proposing this regulation. Rather, it relied on the extensive data and experience of the Department's Consumer Services Bureau, its Enforcement Division, its Legal Division, and extensive input from various trade organizations.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of the proposed rate change would not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

The Commissioner has not identified alternatives to any of the sections or subdivisions thereof which would lessen any adverse impact on small businesses, yet still achieve the desired regulatory objective.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed regulations do not effect small businesses. The regulations do not require any action on the part of any business or individual. Instead, it mandates that the Department of Insurance maintain information submitted to it and make the information available to the public if requested.

Date: March 29, 2002

HARRY W. LOW
Insurance Commissioner

By _____/s/

Patricia K. Staggs
Deputy Commissioner